

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

MARIA SAMANIEGO,

PLAINTIFF,

v.

**SHADY SHORES OF EL PASO, LLC
D/B/A MOUNTAIN VIEW HEALTH
AND REHABILITATION,**

DEFENDANT.

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C.A. No. 3:17-cv-00254

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF THIS COURT:

Defendant Shores of El Paso, LLC d/b/a Mountain View Heath & Rehabilitation (“Shady Shores” or “Defendant”) would respectfully show the Court as follows:

1. On June 30, 2017, Cause No. 2017DCV218 was commenced against Defendant in the 448th Judicial District Court of El Paso County, Texas, and is now pending therein.
2. On July 19, 2017, Defendant was served with Plaintiff’s Original Petition, Jury Demand, and Request for Disclosure in the above-entitled action (the “Petition”).
3. As of the date of this filing, the following pleading has been filed in the state court action in addition to the Plaintiff’s Petition: Defendant’s Original Answer, Special Exception, and Affirmative Defenses. An index and copies of the docket sheet and all process, pleadings, and orders served in the above-entitled action are attached as Exhibits A-F.
4. This Court has original jurisdiction of the above-entitled action pursuant to 28 U.S.C. § 1331, and the action may therefore be removed to this Court pursuant to 28 U.S.C. §1441(a).

5. The above-entitled action is a civil action for unpaid wages under the Fair Labor Standards Act, 29 U.S.C. § 207, as specifically alleged in Plaintiff's Petition. Plaintiff has further alleged in paragraph 6 of Plaintiff's Petition that this action arises under the Constitution, laws, or treaties of the United States, pursuant to 28 U.S.C. § 1331.

6. A jury demand has been made in Cause No. 2017DCV21.

7. This notice is filed with this Court within 30 days after service on Defendant of Plaintiff's Petition in the above-entitled action.

WHEREFORE, Defendant prays that the above-entitled action be removed from the 448th Judicial District Court of El Paso County, Texas to this Court.

Dated: August 15, 2017.

Respectfully submitted,

/s/ Shannon D. Norris

Shannon D. Norris

Lead Attorney

State Bar No. 00788129

NORRIS LAW FIRM, PLLC

735 Plaza Boulevard, Suite 200

Coppell, Texas 75019

Telephone: (214) 396-4700

Facsimile: (214) 396-4777

E-mail: sdnorris@norrisfirm.com

/s/ Jeff Ray

Jeff Ray

State Bar No. 16604400

Chris M. Borunda

State Bar No. 00789161

RAY, McCHRISTIAN & JEANS, P.C.

5822 Cromo Drive

El Paso, Texas 79912

Telephone: (915) 832-7200

Facsimile: (915) 832-7333

E-mail: jray@rmjfirm.com

cborunda@rmjfirm.com

ATTORNEY FOR DEFENDANT

SHADY SHORES OF EL PASO, LLC

D/B/A MOUNTAIN VIEW HEALTH &

REHABILITATION

CERTIFICATE OF SERVICE

I certify that on August 15, 2017, a correct copy of the foregoing document was served on the following counsel of record in accordance with the Federal Rules of Civil Procedure, via CM/ECF and/or e-mail, addressed as follows:

Raymond D. Martinez, Esq.
Jonathan L.R. Baeza, Esq.
Martinez & Martinez Law Firm, PLLC
730 E. Yandell Dr.
El Paso, Texas 79902

/s/ Shannon D. Norris

Shannon D. Norris

Index of Documents Filed in State Court

<u>Exhibit No.</u>	<u>Description</u>	<u>Date Filed</u>
A	Docket Sheet	N/A
B	Plaintiff's Original Petition, Jury Demand, and Request for Disclosure	06/30/2017
C	Civil Cover Sheet	06/30/2017
D	Affidavit of Inability to Pay Court Costs	06/30/2017
E	Citation	06/30/2017
F	Defendant's Original Answer, Special Exception, and Affirmative Defenses	07/21/2017

Exhibit A

Skip to Main Content Logout My Account Search Menu New Civil Search Refine Search Back

Location : All Courts Help

REGISTER OF ACTIONS

CASE No. 2017DCV2189

**MARIA SAMANIEGO VS SHADY SHORES OF EL PASO, LLC D/B/A
MOUNTAIN VIEW HEALTH AND REHABILITATION**

§
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§
§
§

Case Type: **Other Civil**
Date Filed: **06/30/2017**
Location: **448th District Court**

PARTY INFORMATION

Defendant SHADY SHORES OF EL PASO, LLC

Lead Attorneys
SHANNON D NORRIS
Retained
214-396-4700(W)

Plaintiff SAMANIEGO, MARIA

RAYMOND D MARTINEZ
Retained
915-541-1000(W)

EVENTS & ORDERS OF THE COURT

OTHER EVENTS AND HEARINGS

06/30/2017	Original Petition (OCA)	Doc ID# 1		
06/30/2017	Affidavit of Inability to Pay Court Costs		Doc ID# 2	
06/30/2017	Case Information Sheet	Doc ID# 3		
06/30/2017	E-File Event Original Filing			
07/07/2017	Citation			
	SHADY SHORES OF EL PASO, LLC		Served	07/21/2017
			Response Received	07/21/2017
			Returned	07/24/2017
07/21/2017	Answer	Doc ID# 5		

Exhibit B

THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: **SHADY SHORES OF EL PASO, LLC d/b/a MOUNTAIN VIEW HEALTH AND REHABILITATION**, which may be served with process by serving its registered agent, **MICHAEL G. WALLACE** at, **320 EAGLE DRIVE, SUITE 201, DENTON, TX 76201**

Greetings:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition, Jury Demand, and Request for Disclosure at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable **448th Judicial District Court**, El Paso County, Texas, at the Court House of said County in El Paso, Texas.

Said Plaintiff's Petition was filed in said court on this the 30th day of June, 2017, by Attorney at Law JONATHAN L. R. BAEZA, 730 E. YANDELL DRIVE, EL PASO, TX 79902 in this case numbered **2017DCV2189** on the docket of said court, and styled:

**MARIA SAMANIEGO
VS**

SHADY SHORES OF EL PASO, LLC d/b/a MOUNTAIN VIEW HEALTH AND REHABILITATION

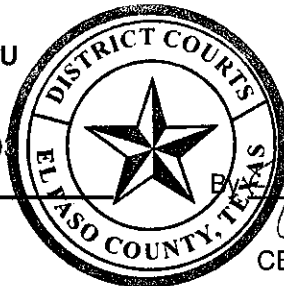
The nature of Plaintiff's demand is fully shown by a true and correct copy of the Plaintiff's Original Petition, Jury Demand, and Request for Disclosure accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at El Paso, Texas, on this the 7th day of July, 2017.

Attest: NORMA FAVELA BARCELEAU, District Clerk, El Paso County, Texas.

CLERK OF THE COURT
NORMA FAVELA BARCELEAU
District Clerk
El Paso County Courthouse
500 E. San Antonio Ave, RM 10
El Paso Texas, 79901



[Signature] Deputy
JoAnn Fernandez

ATTACH
RETURN RECEIPTS
WITH

ADDRESSEE'S SIGNATURE
Rule 106 (a) (2) the citation shall be served by mailing to the defendant by Certified Mail Return receipt requested, a true copy of the citation. Sec. 17.027 Rules of Civil Practice and Remedies Code if not prepared by Clerk of Court.

CERTIFICATE OF DELIVERY BY MAIL

I hereby certify that on the _____ day of _____, 2017, at _____ I mailed to _____

Defendant(s) by registered mail or certified mail with delivery restricted to addressee only, return receipt requested, a true copy of this citation with a copy of the Plaintiff's Original Petition, Jury Demand, and Request for Disclosure attached thereto.

*NAME OF PREPARER TITLE

ADDRESS

CITY STATE ZIP

TITLE

RETURN OF SERVICE

Delivery was completed on _____, delivered to _____
_____ as evidence by Domestic Return Receipt PS Form 3811
attached hereto.

The described documents were not delivered to the named recipient. The certified mail envelope was returned
undelivered marked _____.

This forwarding address was provided: _____

El Paso County, Texas

By: _____
Deputy District Clerk

OR

Name of Authorized Person

By: _____

VERIFICATION BY AUTHORIZED PERSON

State of Texas

County of El Paso

Before me, a notary public, on this day personally appeared _____, known to me to be the person
whose name is subscribed to the foregoing Return of Service, and being by me first duly sworn, declared, "I am
disinterested party qualified to make an oath of that fact and statements contained in the Return of Service and true and
correct."

Subscribed and sworn to be on this _____ day
of _____.

Notary Public, State of _____

My commission expires: _____

IN THE _____ JUDICIAL DISTRICT COURT
IN THE COUNTY COURT AT LAW NUMBER _____

Maria Samaniego

Plaintiff,

v. Shady Shores of El
Paso, LLC DBA Mountain
View Health and
Rehabilitation

Defendant.

CAUSE NO. _____

AFFIDAVIT OF INDIGENCY

BEFORE ME, the undersigned authority, on this day personally appeared

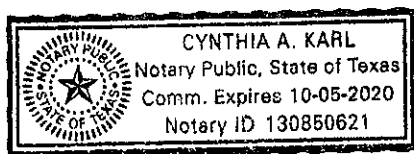
Maria Samaniego, Plaintiff, who being by me duly sworn makes the following statement:

1. "My name is Maria Samaniego. I am a Plaintiff in the above referenced cause.
2. I have a net income of approximately \$ 800 per month.
3. I have no other source of income.
4. I have governmental assistance to wit: N/A.
5. My monthly expenses are: 1200.
6. I have 0 dependents.
7. I am unable to pay the court costs in the suit.
8. "I verify that the statements made in this affidavit are true and correct."

Maria Samaniego

AFFIANT

SWORN AND SUBSCRIBED TO before me and by the said Maria Samaniego
on this the 30th day of June, 2017 to certify which witnessed my hand and seal of
office.



Cynthia Karl
Notary Public in and for the State of Texas

El Paso County - 448th District Court

Filed 6/30/2017 1:50 PM

CIVIL CASE INFORMATION SHEET

Norma Favela Barceleanu

District Clerk

El Paso County


2017DCV2189

CAUSE NUMBER (FOR CLERK USE ONLY): COURT (FOR CLERK USE ONLY):

STYLED MARIA SAMANIEGO V SHADY SHORES OF EL PASO, LLC DBA MOUNTAIN VIEW HEALTH AND REHABILITATION

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet: Name: Raymond D. Martinez Email: raymond@martinezlawyers.com Address: 730 E. Yandell Dr. City/State/Zip: El Paso, Texas 79902 Telephone: 915-541-1000 Fax: 915-541-1002 Signature:  State Bar No: TX-24002537		Names of parties in case: Plaintiff(s)/Petitioner(s): Maria Samaniego Defendant(s)/Respondent(s): Shady Shores of El Paso, LLC DBA Mountain View Health and Rehabilitation (Attach additional page as necessary to list all parties)		Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: Additional Parties in Child Support Case: Custodial Parent: Non-Custodial Parent: Presumed Father:	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input checked="" type="checkbox"/> Other Employment:		Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:			
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input checked="" type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					

MARIA SAMANIEGO,**Plaintiff,****v.****SHADY SHORES OF EL PASO, LLC
D/B/A MOUNTAIN VIEW HEALTH
AND REHABILITATION,****Defendant.**§
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**PLAINTIFF'S ORIGINAL PETITION, JURY DEMAND,
AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW MARIA SAMANIEGO, herein called Plaintiff, complaining of **SHADY SHORES OF EL PASO, LLC D/B/A MOUNTAIN VIEW HEALTH AND REHABILITATION** hereinafter called Defendants, and for cause of action would respectfully show the Court and jury the following:

**I.
NATURE OF SUIT**

1. The Fair Labor Standards act was passed by Congress in 1938 in an attempt to eliminate low wages and long hours and to correct conditions that were detrimental to the health and well-being of workers. To achieve its humanitarian goals, the FLSA "limits to 40 a week the number of hours that an employer may employ any of his employees subject to the Act, unless the employee receives compensation for her employment in excess of 40 hours at a rate not less than one and a one-half times the regular rate at which he is employed." *Walling v. Helmerich & Payne*, 323 U.S. 37, 40 (1944) (discussing requirements of 29 U.S.C. § 207 (a)).

2. Defendant violated the FLSA by failing to pay Plaintiff at time and one-half his regular rate

of pay for all hours worked within a workweek in excess of forty hours.

3. Plaintiff is a non-exempt employee who has been denied overtime compensation owed to her as required by the law. Plaintiff filed this petition to recover unpaid overtime compensation owed to her.

II. PARTIES, JURISDICTION AND VENUE

4. Plaintiff Rudy Armendariz ("Plaintiff") is currently a citizen and resident of El Paso, Texas.

5. Defendant **SHADY SHORES OF EL PASO, LLC** is a Texas limited liability corporation, whose registered agent for service is **MICHAEL G. WALLACE** and may be served with citation at **320 EAGLE DRIVE, SUITE 201, DENTON, TEXAS 76201**, or wherever they may be found.

6. The court has jurisdiction to hear the merits of Plaintiff's claims under 28 U.S.C. §§1331 & 1343. Venue exists in this district and division as detailed in 28 U.S.C. §1391.

7. All of the acts alleged herein occurred in El Paso County, Texas.

III. FACTUAL BACKGROUND

8. Plaintiff was employed at by Defendant from approximately January 10, 2016, as a Dietary Aide.

9. During the time Plaintiff was been employed by Defendant, she worked additional hours on a weekly basis without compensation at the instruction of Defendant. Plaintiff was required to work either "off the clock" or more than forty (40) hours in one week. Defendant was aware that Plaintiff was working "off the clock" and/or overtime, yet did not pay all necessary extra wages for this effort. Plaintiff would work through lunch or after work hours.

10. Defendant did not adequately keep track of Plaintiff's work hours even though Plaintiff was a non-exempt employee for overtime purposes as outlined under the Fair Labor Standards Act , 29

U.S.C. §§ 201 *et. seq* ("FLSA").

11. Plaintiff's position with Defendant is not exempt from overtime under the FLSA.

12. From her date of hire, January 2016, to the date of her termination, November 24, 2016, Plaintiff started working at 5:00 a.m. and was not allowed to clock-in until 6:00 a.m. Plaintiff was required to clock-out at 2:30 p.m.

13. From January 2016 to May 2016, Plaintiff was required to work double shifts (5:00 a.m. to 10:00 p.m.) but was only paid overtime on some occasions.

14. From October 24, 2016 to November 24, 2016, Plaintiff was required to clock-out at 2:30 p.m. and continue working until 3:45 p.m. daily.

IV. CAUSES OF ACTION

A. FAIR LABOR STANDARDS ACT VIOLATIONS BY DEFENDANT

16. Plaintiff re-alleges and incorporates the allegations contained in Paragraphs 1 through 14 as if fully stated herein.

17. Plaintiff has satisfied all jurisdictional prerequisites in connection with her claim under the FLSA.

18. Defendant is an "employer" as defined by the FLSA in 29 U.S.C. § 203(d).

16. While Plaintiff was employed by Defendant, she was an "employee" as defined by the FLSA in 29 U.S.C. § 203(e)(1).

19. Defendant is an "enterprise" within the meaning of 29 U.S.C. § 203(r), and an "[e]nterprise engaged in commerce or in the production of goods for commerce" as defined by the FLSA in 29 U.S.C. § 203(s)(1).

20. While employed by Defendant, Plaintiff was entitled to payment of one and one half times

her regular rate of pay for all hours worked over forty hours in one week, as provided for under 29 U.S.C. § 207.

21. Defendant failed to properly log Plaintiff's work hours, or pay for all of overtime hours worked. As a result, during the Plaintiff's employment with Defendant, she worked numerous overtime hours for which he was not properly compensated. For purposes of the FLSA, while employed by Defendant, Plaintiff was improperly classified as "exempt" from payment of overtime.

22. As a result of Defendant's violations of the FLSA, Plaintiff has suffered actual damages in the form of lost wages, in an amount that has not yet been fully established, but which can be estimated for the purpose of bringing this lawsuit.

23. Defendant committed a willful violation of the FLSA.

24. Defendant failed to maintain accurate records of the hours worked of Plaintiff; thus, Defendant violated 29 U.S.C. § 211(c).

25. As a result of these violations, Plaintiff requests that she be awarded all damages, to which she is entitled, including, but not limited to, lost wages, salary, employee benefits, and any other compensation denied or lost as a result of the violation, plus interest. In addition, Plaintiff requests liquidated damages equal to the amount of reimbursable compensation described above. Plaintiff also requests any additional equitable relief to which she is entitled.

V. DAMAGES

26. Plaintiff sues for actual damages proximately caused or otherwise produced by Defendant's conduct. Plaintiff also sues for past lost wages.

27. Plaintiff's damages are within the court's jurisdictional limits. Pursuant to the amendment of Texas Rule of Civil Procedure 47, Plaintiff pleads as stated in the Rule: (1) monetary relief of

\$200,000 to \$1,000,000.00, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees. *See* Tex. R. Civ. P. 47.

**VI.
REQUEST FOR DISCLOSURE**

28. Pursuant to Rule 194, you are requested to disclose within fifty (50) days of the service of this request, the information or material described in Rule 194.2. With regard to the material described in Rule 194.2(b), please answer to the full extent authorized by the rules, which should include the names of all individuals and entities with an ownership interest in the business.

**VII.
ATTORNEY'S FEES**

29. Plaintiff seeks attorney's fees to the extent she is a prevailing party.

**VIII.
JURY DEMAND**

30. Plaintiff requests a jury trial.

**IX.
PRAYER FOR RELIEF**

Wherefore, Plaintiff requests that Defendant be cited to appear and answer, and that on final trial, Plaintiff have judgment against Defendant as follows:

- a. Judgment against Defendant for Plaintiff's actual damages;
- b. Compensation for all hours worked at a rate not less than the applicable minimum wage;
- c. Overtime and "off the clock" compensation for all unpaid hours worked in excess of forty hours at the rate of one and one half times her regular rate;
- d. All unpaid wages and overtime compensation;
- e. Judgment against Defendants for liquidated damages for the maximum amount allowed by law; including doubling of all back pay awarded
- f. Compensatory damages, emotional distress and punitive damages 29 U.S.C 215(a)(3).
- g. Pre-judgment and post-judgment interest at the maximum amount allowed by law;
- h. Costs of suit, including reasonable attorney's fees, costs and expenses of this action as provided by the FLSA;

- i. The award of such and further relief, both at law and in equity, to which Plaintiff may be justly entitled.
- j. An order that Defendant take such other and further actions as may be necessary to redress Defendants violation of the FLSA;
- k. Pre-judgment and post-judgment interest at the maximum amount allowed by law;

Respectfully submitted,

MARTINEZ & MARTINEZ LAW FIRM, PLLC

Attorneys for Plaintiff

730 E. Yandell Dr.

El Paso, Texas 79902

(915) 541-1000

(915) 541-1002 (Facsimile)

raymond@martinezlawyers.com

jonathan@martinezlawyers.com

By: /s/ Jonathan L.R Baeza

RAYMOND D. MARTINEZ

State Bar No. 24002537

JONATHAN L.R. BAEZA

State Bar No. 24092066

Exhibit C

El Paso County - 448th District Court

Filed 6/30/2017 1:50 PM

CIVIL CASE INFORMATION SHEET

Norma Favela Barceleanu

District Clerk

El Paso County

2017DCV2189

CAUSE NUMBER (FOR CLERK USE ONLY): COURT (FOR CLERK USE ONLY):

STYLED MARIA SAMANIEGO V SHADY SHORES OF EL PASO, LLC DBA MOUNTAIN VIEW HEALTH AND REHABILITATION

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.


1. Contact information for person completing case information sheet: Name: Raymond D. Martinez Email: raymond@martinezlawyers.com Address: 730 E. Yandell Dr. City/State/Zip: El Paso, Texas 79902 Telephone: 915-541-1000 Fax: 915-541-1002 Signature:  State Bar No: TX-24002537		Names of parties in case: Plaintiff(s)/Petitioner(s): Maria Samaniego Defendant(s)/Respondent(s): Shady Shores of El Paso, LLC DBA Mountain View Health and Rehabilitation (Attach additional page as necessary to list all parties)		Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: Additional Parties in Child Support Case: Custodial Parent: Non-Custodial Parent: Presumed Father:	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocity (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input checked="" type="checkbox"/> Other Employment:		Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax		Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:			
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover	
4. Indicate damages sought (do not select if it is a family law case):					
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input checked="" type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000					

Exhibit D

IN THE _____ JUDICIAL DISTRICT COURT
IN THE COUNTY COURT AT LAW NUMBER _____

Maria Samaniego

Plaintiff,

v. Shady Shores of El
Paso, LLC DBA Mountain
View Health and
Rehabilitation

Defendant.

CAUSE NO. _____

AFFIDAVIT OF INDIGENCY

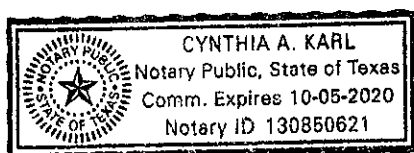
BEFORE ME, the undersigned authority, on this day personally appeared

Maria Samaniego, Plaintiff, who being by me duly sworn makes the following statement:

1. "My name is Maria Samaniego. I am a Plaintiff in the above referenced cause.
2. I have a net income of approximately \$ 800 per month.
3. I have no other source of income.
4. I have governmental assistance to wit: N/A.
5. My monthly expenses are: 1200.
6. I have 0 dependents.
7. I am unable to pay the court costs in the suit.
8. "I verify that the statements made in this affidavit are true and correct."

Maria Samaniego
AFFIANT

SWORN AND SUBSCRIBED TO before me and by the said Maria Samaniego
on this the 30th day of June, 2017 to certify which witnessed my hand and seal of
office.



Cynthia Karl
Notary Public in and for the State of Texas

Exhibit E

THE STATE OF TEXAS

NOTICE TO DEFENDANT: "You have been sued. You may employ an attorney. If you, or your attorney, do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you."

TO: **SHADY SHORES OF EL PASO, LLC d/b/a MOUNTAIN VIEW HEALTH AND REHABILITATION**, which may be served with process by serving its registered agent, **MICHAEL G. WALLACE** at, **320 EAGLE DRIVE, SUITE 201, DENTON, TX 76201**

Greetings:

You are hereby commanded to appear by filing a written answer to the Plaintiff's Original Petition, Jury Demand, and Request for Disclosure at or before ten o'clock A.M. of the Monday next after the expiration of twenty days after the date of service of this citation before the Honorable **448th Judicial District Court**, El Paso County, Texas, at the Court House of said County in El Paso, Texas.

Said Plaintiff's Petition was filed in said court on this the 30th day of June, 2017, by Attorney at Law JONATHAN L. R. BAEZA, 730 E. YANDELL DRIVE, EL PASO, TX 79902 in this case numbered **2017DCV2189** on the docket of said court, and styled:

MARIA SAMANIEGO
VS

SHADY SHORES OF EL PASO, LLC d/b/a MOUNTAIN VIEW HEALTH AND REHABILITATION

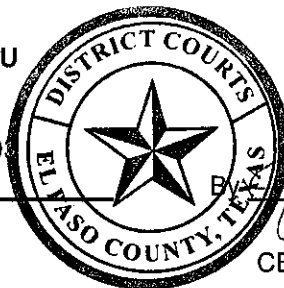
The nature of Plaintiff's demand is fully shown by a true and correct copy of the Plaintiff's Original Petition, Jury Demand, and Request for Disclosure accompanying this citation and made a part hereof.

The officer executing this writ shall promptly serve the same according to requirements of law, and the mandates thereof, and make due return as the law directs.

Issued and given under my hand and seal of said Court at El Paso, Texas, on this the 7th day of July, 2017.

Attest: NORMA FAVELA BARCELEAU, District Clerk, El Paso County, Texas.

CLERK OF THE COURT
NORMA FAVELA BARCELEAU
District Clerk
El Paso County Courthouse
500 E. San Antonio Ave, RM 10
El Paso Texas, 79901



[Signature] Deputy
JoAnn Fernandez

ATTACH
RETURN RECEIPTS
WITH

ADDRESSEE'S SIGNATURE
Rule 106 (a) (2) the citation shall be served by mailing to the defendant by Certified Mail Return receipt requested, a true copy of the citation. Sec. 17.027 Rules of Civil Practice and Remedies Code if not prepared by Clerk of Court.

CERTIFICATE OF DELIVERY BY MAIL

I hereby certify that on the _____ day of _____, 2017, at _____ I mailed to _____

Defendant(s) by registered mail or certified mail with delivery restricted to addressee only, return receipt requested, a true copy of this citation with a copy of the Plaintiff's Original Petition, Jury Demand, and Request for Disclosure attached thereto.

*NAME OF PREPARER TITLE

ADDRESS

CITY STATE ZIP

TITLE

RETURN OF SERVICE

Delivery was completed on _____, delivered to _____
_____ as evidence by Domestic Return Receipt PS Form 3811
attached hereto.

The described documents were not delivered to the named recipient. The certified mail envelope was returned
undelivered marked _____.

This forwarding address was provided: _____

El Paso County, Texas

By: _____
Deputy District Clerk

OR

Name of Authorized Person

By: _____

VERIFICATION BY AUTHORIZED PERSON

State of Texas

County of El Paso

Before me, a notary public, on this day personally appeared _____, known to me to be the person
whose name is subscribed to the foregoing Return of Service, and being by me first duly sworn, declared, "I am
disinterested party qualified to make an oath of that fact and statements contained in the Return of Service and true and
correct."

Subscribed and sworn to be on this ____ day
of _____.

Notary Public, State of _____

My commission expires: _____

Exhibit F

CAUSE No. 2017DCV2189

MARIA SAMANIEGO,	§	IN THE DISTRICT COURT
	§	
PLAINTIFF,	§	
	§	
V.	§	448 TH JUDICIAL DISTRICT
	§	
SHADY SHORES OF EL PASO, LLC	§	
D/B/A MOUNTAIN VIEW HEALTH	§	
AND REHABILITATION,	§	
	§	
DEFENDANT.	§	EL PASO COUNTY, TEXAS

DEFENDANT’S ORIGINAL ANSWER,
SPECIAL EXCEPTION, AND AFFIRMATIVE DEFENSES

TO THE HONORABLE JUDGE OF THIS COURT:

Defendant Shady Shores of El Paso, LLC d/b/a Mountain View Heath & Rehabilitation
(“Shady Shores” or “Defendant”) for its answer would show the Court as follows:

GENERAL DENIAL

1. Defendant generally denies Plaintiff’s allegations and demands strict proof
thereof in accordance with the Texas Rules of Civil Procedure. TEX. R. CIV. P. 92.

SPECIAL EXCEPTION

2. Plaintiff failed to plead the maximum amount of damages claimed. TEX. R. CIV.
P. 91.

AFFIRMATIVE DEFENSES

3. Defendant’s company policy required Plaintiff to record all hours worked on her
time sheets. Plaintiff submitted time sheets that purported to record the total number of hours
worked by Plaintiff in each workweek, and Defendant paid Plaintiff’s regular wages and
overtime based on the number of hours that Plaintiff claimed to have worked on her time sheets.
To the extent that Plaintiff failed to record her time accurately, Defendant’s act or omission

allegedly giving rise to Plaintiff's action was in good faith and Defendant had reasonable grounds for believing that its alleged act or omission was not a violation of the Fair Labor Standards Act. 28 U.S.C. § 260.

4. Defendant's company policy required Plaintiff to record all hours worked on her time sheets. Plaintiff submitted time sheets that purported to record the total number of hours worked by Plaintiff in each workweek, and Plaintiff intended for Defendant to rely on the representations in her time sheets. Plaintiff knew the actual number of hours that she worked each week and Defendant neither knew nor had reason to know that Plaintiff was not accurately recording her total hours worked. Defendant substantially, reasonably, and detrimentally relied on Plaintiff's representations when it calculated and paid Plaintiff's regular wages and overtime based on the number of hours that Plaintiff claimed to have worked on her time sheets. Plaintiff is therefore estopped from controverting her prior representations by claiming that she worked additional time that was not recorded on her time sheets.

PRAYER FOR RELIEF

WHEREFORE, Defendant requests that the Court enter an order:

- (a) Dismissing Plaintiff's claims with prejudice, and ordering that Plaintiff take nothing by way of her claims;
- (b) Awarding Defendant its reasonable attorneys' fees and costs incurred in defending this action; and
- (c) Awarding Defendant all other legal and equitable relief to which it may be entitled.

Dated: July 21, 2017.

Respectfully submitted,

/s/ Shannon D. Norris

Shannon D. Norris

State Bar No. 00788129

NORRIS LAW FIRM, PLLC

735 Plaza Boulevard, Suite 200

Coppell, Texas 75019

Telephone: (214) 396-4700

Facsimile: (214) 396-4777

E-mail: sdnorris@norrisfirm.com

**ATTORNEY FOR DEFENDANT
SHADY SHORES OF EL PASO, LLC
D/B/A MOUNTAIN VIEW HEALTH &
REHABILITATION**

CERTIFICATE OF SERVICE

I certify that on July 21, 2017, a true and correct copy of the foregoing document was served on the following counsel of record pursuant to the Texas Rules of Civil Procedure via e-mail and/or electronic service:

Raymond D. Martinez, Esq.
Jonathan L.R. Baeza, Esq.
Martinez & Martinez Law Firm, PLLC
730 E. Yandell Dr.
El Paso, Texas 79902

/s/ Shannon D. Norris
Shannon D. Norris